CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2386
Heard at Montreal, Tuesday, 14 September 1993
concerning
VIA RAIL CANADA INC.
and
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:
Time claims of Locomotive Engineer K.D. Currie of Halifax for loss of earnings
on July 4 and 5, 1992.

JOINT STATEMENT OF ISSUE:
On July 3, 1992, Locomotive Engineer K.D. Currie operated Train 12 to Halifax,
N.S., and upon arrival at 19:50 hours, booked 15 hours rest, i.e., until
10:50 hours on July 4.

Mr. Currie had been scheduled to work Train 11 on July 4. The normal on-duty
time for this assignment was 10:50 hours; however, that on-duty time was
advanced to 10:10 hours due to a special move. Since Mr. Currie was under rest
until 10:50 hours, he was unavailable at the 10:10 hours calling time for
Train 11 and a spare locomotive engineer was called in his stead.

It is the Brotherhood's position that the Corporation violated Article 54.1 by
not allowing Mr. Currie to follow his assignment after his rest expired at
10:50 hours, and is seeking loss of earnings on behalf of the grievor.

It is the Corporation's position that there was no violation of article 54.1

FOR THE BROTHERHOOD:FOR THE CORPORATION:
(SGD.) B. E. WOOD(SGD.) C. C. MUGGERIDGE
GENERAL CHAIRMANDEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:
D. A. Watson - Senior Labour Relations Officer, Montreal
K. Taylor - Senior Negotiator and Advisor, Labour Relations, Montreal

And on behalf of the Brotherhood:
B. E. Wood - General Chairman, Halifax
R. Lebel - General Chairperson, UTU, Quebec

AWARD OF THE ARBITRATOR

The instant claim turns entirely on the application of article 54.1 of the collective agreement. The portion which the parties agree is pertinent to the resolution of this grievance reads as follows:

> 54.1 A locomotive engineer assigned to a regular run will, if available, follow such assignment.

The above article contains a note which relates to the rights of the locomotive engineer in respect of working a train to which he or she is regularly assigned which is operated ahead of its scheduled departure time. The parties are agreed, for the purposes of this grievance, that that note relates only to freight operations and can have no application to passenger service, which is the case in the grievance at hand.

On the material before me I cannot find a violation of article 54.1 of the collective agreement. It is common ground that on July 4, 1992 Mr. Currie was in assigned passenger service on Train 11 and had an expected on-duty time of 10:50 hours. Upon his arrival in Halifax on the previous day he booked 15 hours rest, which terminated at 10:50 hours on July 4. When the Corporation decided to commence the tour of duty at 10:10 hours, apparently because of the need to move the equipment from the maintenance facility to the station, it found itself unable to call the grievor, because he had booked rest until 10:50 hours. In the result, the new time for the assignment overlapped the grievor's period of rest. In its presentation the Brotherhood did not dispute that under the provisions of article 29.3 the grievor could not be called for 10:10 hours, or at any time before 10:50 hours.

In the circumstances the Arbitrator can find no basis upon which the grievance can be allowed. Before me the Brotherhood asserts the right of the grievor

to follow his assignment, under the terms of article 54.1 of the collective agreement. The express language of that provision, however, is predicated upon the locomotive engineer in question being "available". Given that Mr. Currie was on rest at the time at which he might otherwise have been called, he cannot be said to have been available within the meaning of article 54.1 of the collective agreement.

In considering this case it is instructive to reflect on the language of the NOTE to article 54.1 which governs freight operations. It reads as follows:

> NOTE: When a train is operated ahead of its scheduled departure time, a definite effort will be made to contact the locomotive engineer affected thereby to so inform him or her the train is to be run early. When a locomotive engineer who cannot be so informed reports for duty before the assignment so operated departs, he or she will be allowed to follow the assignment and the spare locomotive engineer canceled, provided no delay will accrue to the train.

It is, I think, instructive that the parties to the collective agreement made the specific allowance described above for engineers in freight service whose scheduled working time is moved ahead. If the parties had intended a similar saving provision to apply to locomotive engineers in passenger service, it would have been a simple matter for them to do so. Absent such a saving provision, however, the more compelling conclusion is that they did not agree to an equivalent protection for a locomotive engineer in assigned passenger service in the position of the grievor.

For the foregoing reasons the grievance must be dismissed.

17 September 1993(sgd.) MICHEL G. PICHER
ARBITRATOR